

US DOJ Findings and IMD as it Impacts Adult Care Homes and Individuals with Mental Illness

Complaint by Disability Rights NC to US Department of Justice

Disability Rights NC requested the US Department of Justice (USDOJ) to investigate their concern that adults with mental illness were improperly residing in Adult Care Home (ACH) facilities. The complaint alleged the following:

- Personal care services (PCS) eligibility criteria are less stringent for residents of ACHs than for those receiving in-home PCS.
- The number of residents with mental illness who reside in ACHs has increased. ACH's high resident-to-staff ratio and lack of supervision by a qualified mental health professional lead to unsafe environment for residents.
- The elimination and later reinstatement of limited Community Support services has led to individuals with mental illness moving or being discharged to ACH settings.
- Eligibility for In-Home Care for Adults (IHCA) is strict and will lead to individuals losing services that allow them to live in their homes, thus requiring them to seek out other living arrangements such as ACHs.
- Because Community Support services are limited and PCS services are more readily available for those in an ACH setting, a bias is created in favor of ACH placements.

Findings from the US Department of Justice Investigation

After an eight-month investigation, the USDOJ, Civil Rights Division, issued a letter of findings on July 28, 2011, concluding that North Carolina "fails to provide services to individuals with mental illness in the most integrated setting appropriate to their needs in violation of the ADA," and that "[r]eliance on unnecessary institutional settings violates the civil rights of people with disabilities." The USDOJ found that "[m]ost people with mental illness receiving services in adult care homes could be served in more integrated settings, but are relegated indefinitely and unnecessarily to adult care homes because of systemic State actions and policies," which include:

- The State's failure to develop a sufficient quantity of community-based alternatives for individuals with mental illness unnecessarily and indefinitely confined to ACHs.
- The State's failure to redirect resources already available to expand community-based alternatives.
- The State's prioritization of investment in institutional settings at the expense of community-based settings.
- The use of policies and practices that cause individuals with mental illness to enter ACHs to obtain support services.

The USDOJ determined that:

- ACHs are segregated, institutional settings.
- The majority of ACH residents with mental illness could be served in more integrated settings.
- North Carolina administers its mental health system in a way that segregates individuals with mental illness in institutional settings.
- Individuals with mental illness are at risk of unnecessary institutionalization in ACH.
- Serving people with mental illness in integrated settings can be reasonably accommodated.

To remedy the deficiencies identified by the USDOJ, it was recommended that the State should immediately take steps to:

- 1) Serve individuals with mental illness in the community by realigning its funds away from institutional ACHs to prioritize integrated, community settings by developing supported housing and other community support services.
- 2) Implement an effective plan to transition people with mental illness unnecessarily institutionalized in ACHs to supported housing.

Institutions of Mental Disease

The term “institution for mental diseases” (IMD) means a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. (42 USCA §1396d(i))

Guidelines for Determining Whether Institution Is an IMD

From Section 4390(C) of the Medicaid State Manual

The Health Care Financing Administration (HCFA) uses the following guidelines to evaluate whether the overall character of a facility is that of an IMD. If any of these criteria are met, a thorough IMD assessment must be made. Other relevant factors may also be considered. A final determination of a facility’s IMD status depends on whether an evaluation of the information pertaining to the facility establishes that its overall character is that of a facility established and/or maintained primarily for the care and treatment of individuals with mental diseases. The guidelines are:

- 1) The facility is licensed as a psychiatric facility.
- 2) The facility is accredited as a psychiatric facility.
- 3) The facility is under the jurisdiction of the State’s mental health authority. (This criterion does not apply to facilities under mental health authority that are not providing services to mentally ill persons.)
- 4) The facility specializes in providing psychiatric/psychological care and treatment indicated by:
 - A review of patients' records,
 - An unusually large proportion of the staff has specialized psychiatric/psychological training, or
 - A large proportion of the patients are receiving psychopharmacological drugs.
- 5) The current need for institutionalization for more than 50 percent of all the patients in the facility results from mental diseases.

The Department of Health and Human Services Actions on IMD

The Department of Health and Human Services (DHHS) has identified 38 facilities that are at risk of potentially being classified as an Institution of Mental Disease (IMD). According to DHHS, this identification is based on claims indicating a primary diagnosis of mental illness for more than 50% of the recipients between the ages of 21 and 64 residing in those facilities. DHHS has begun working to address this concern in the following stages: clinical assessments and data collection; determination of whether each resident’s current need for services in the facility results from a mental disease; determination of the overall character of the facility; and notifying ACHs of IMD determination results and transitioning recipients.

Department of Health and Human Services Response

In summary, there are three concerns on the horizon pertaining to Adult Care Homes (ACHs) and the provision of services to individuals with mental illness:

- 1) The direction from the Centers for Medicare and Medicaid Services (CMS) regarding Personal Care Services (PCS) in ACHs.
- 2) The USDOJ findings that the State is in violation of the Americans with Disabilities Act (ADA) and Olmstead by not providing services to individuals with mental illness in the most integrated setting appropriate.
- 3) The potential for 38 ACHs to be identified as an Institution of Mental Disease, thereby jeopardizing federal Medicaid assistance.

DHHS is developing a proposal to respond to the identified concerns and is working to secure additional time for a more comprehensive approach. Secretary Cansler sent a letter to Kathleen Sebelius, Secretary, US DHHS, requesting additional time for North Carolina to provide a coordinated approach. A deadline extension will allow the State more time to complete assessments; identify and/or develop housing options and transition residents; request any necessary statutory changes from the General Assembly; ensure compliance with ADA and Olmstead; and avoid elimination of Medicaid coverage for individuals impacted by these issues. The Secretary requested a deadline extension to October 1, 2012.

Additional Resources

Disability Rights Report: *Trapped in a Fractured System, People with Mental Illness in Adult Care Homes*, August 2010. <http://www.disabilityrightsn.org/pages/270/investigative-report-adult-care-homes/>

Complaint by Disability Rights NC to the United States Department of Justice on behalf of Individuals with Mental Illness living in Adult Care homes in North Carolina.
<http://www.disabilityrightsn.org/intranet/downloadManagerControl.php?mode=getFile&elementID=2303&type=5&atomID=1457>

US Department of Justice, Civil Rights Division, letter to Attorney General Roy Cooper.
www.ada.gov/olmstead/documents/nc_findings_letter.docx

NC Institute of Medicine Report: *Short- and Long-Term Solutions for Co-Location in Adult and Family Care Homes: A Report of the NCIOM Task Force on the Co-Location of Different Populations in Adult Care Homes*, January 2011. <http://www.nciom.org/publications/?colocationadultcarehomes>